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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/599,895

10/12/2006

Sandra Maria Salles Hanszmann

AP119-06

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EXAMINER

PRATT, HELEN F

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

04/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/599,895

**Applicant(s)**HANSZMANN, SANDRA MARIA  
SALLES**Examiner**

Helen F. Pratt

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10-12-06</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boreyko et al. (US 2005/0266018) in view of Aunt Clair's Fruit Lax, and Natural Health Web.

Boreyko et al. disclose a composition containing fruits such as papaya, apple, pineapple, and plums (0017, last 12 lines). Claim 1 differs from the reference in the use of figs and in the particular amounts of ingredients. Aunt Claire's Fruit Lax discloses that it is known to use dried plums, figs, and an acidulating agent, i. e. apple cider vinegar in a composition to prevent constipation (pages 1-3). Natural Health Web discloses that pears, papaya and figs contain laxative characteristics. Even though the amounts are not stated, generally one would eat enough until the right results were obtained. Four or Five figs, and part of a medium sized papaya can be eaten (pages 1-3). Certainly, it would have been within the skill of the ordinary worker to use particular amounts for children. Thickening agents are well known in any recipe for their known function of thickening the product. The further ingredients read on zero amounts. Therefore, it would have been obvious to use figs and other fruits which are known to relieve constipation in the composition of Boreyko et al. for their known functions.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to claim 1 above, and further in view of Choi.(US 2006/0188636).

Claim 2 further requires cooking the fruits 10 to 30 minutes, straining them, and where necessary cooking with indirect heat. Choi discloses cooking papaya fruit for at least 30 minutes in water, sieving the fruit, and making a puree of the papaya fruit (abstract and 0029, 0035, 00040). The further processing limitations such as washing and removing seeds are seen as normal processing procedures within the skill of the ordinary worker. Cooking other fruits is well known as in cooking prunes. Pasteurization is disclosed which is at the claimed temperature range, as is citric acid (0035, 0036). Preservatives such as sodium benzoate are well known and are routinely used in processing foods. No patentable distinction is seen in the cooking time. The final product has a water content of 77% and a sugar content of 16-24% (0043, last sentence). Added sugar can be from 5-40% (0044). Therefore, various Brix can be made using the composition of Choi. The reference discloses cooking the mixture, adding citric acid to a pH of 3.8, straining the mixture and filling it into glasses, closing the glasses and pasteurizing. Nothing critical is seen in using a Bain Marie or an autoclave, which reduces bacteria, and pasteurization as disclosed at this time. The reference discloses that papaya can be used to treat constipation (0028).

Claim 2 further requires adding sugar or concentrated apple juice and a thickening agent to reach a Brix of 28 to 36 degrees and then heating to 90-95, adding acidulants and preservatives, and fructose, and then heating only one minute and

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bottling and further heating. Even though Choi only discloses cooking papaya, it is well known to cook other fruits such as prunes and apples. Therefore, it would have been obvious to cook, strain, and pasteurize fruit as shown by Choi in the process of the combined references.

Claim 3 requires cooking the plums in vapor and then in water removing seeds, blending, and claim 4, that pineapple can be cooked with all the fruits and claim 5 requires the use of an autoclave. Murat et al. disclose that it is known to cook fruits in a basket with steam in a pressure cooker (0001, 0009, and 0017). It would have been within the skill of the ordinary worker to strain the fruit if one did not want fibers and seeds in the product. The pressure cooker performs the same function as an autoclave. No weight is given to the particular apparatus in a composition claim, if the same function can be performed by another apparatus. Therefore, it would have been obvious to cook as claimed and to treat with an apparatus to sterilize the product.

### ***Information Disclosure Statement***

The references provided by the search report cannot be considered as they are not in English.

### ***Claim Objections***

The claims are objected to because the lines are crowded too closely together, making reading difficult. Substitute claims with lines one and one-half or double spaced on good quality paper are required. See 37 CFR 1.52(b).

Claims 3 -5 depend on claim 2. Claims 3-5 do not need to contain the long preamble as cited in lines 1-3 of claim 2. Applicant could say , “A method as in claim 2” “, characterized by ....” or “made by the process of”.

***Claim Rejections - 35 USC § 112***

Claims 2 , 3 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 2 (e), next to last line is indefinite in the use of the term “plus fructose”. It is not known what is meant by this term.

In claim 3, next to last line, it is not known what “boiler 3” refers to. No boiler 1, or 2, has been mentioned.

Claim 5 is indefinite in the use of the phrase “or any other type of radiation allowed by the legislation”. It is not known what type radiation this might be in order to properly examine the claim.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Helen F. Pratt/  
Primary Examiner, Art Unit 1794

4-15-09